



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

ZACHARY FRANKIN SMITH,
Petitioner,

vs.

LAURIE FRANCIS BESSING, Warden, et al.,
Respondents.

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CIVIL ACTION NO. 0:07-2670-HFF-BM

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the petition for a writ of habeas corpus be dismissed without prejudice and without issuance and service of process upon Respondents. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 28, 2007, and the Clerk of Court entered Petitioner's objections to the Report on October 11, 2007. The Court has carefully reviewed the

objections, but finds no basis on which to reject the Magistrate Judge's Report. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the petition for a writ of habeas corpus in the above-captioned case be **DISMISSED** without prejudice and without issuance and service of process upon Respondents.

IT IS SO ORDERED.

Signed this 15th day of October, 2007, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 30 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.